IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

RSA No.295 of 2007.
Date of decision: 11.12.2007.

Daulat Ram & Another **….Appellants**

Versus

Pritam Chand & Others **….Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellants:	**Mr.Ajay Goel, Advocate.**
For Respondents 1(a) 1(e)	**Mr.Bhupender Gupta, Senior to Advocate with Mr.Neeraj Gupta,Advocate.**

Dev Darshan Sud,J.

CMP No.730 of 2007.

This application is not opposed by the respondents. It is accordingly allowed. It is directed that the name of respondent No.4 be deleted from the array of respondents. This application is disposed of.

CMP(M) Nos.525 and 526 of 2005 and CMP No.681 of 2005.

All these three applications have been filed by the appellants with a prayer that the legal representatives of Shri Pritam Chand, respondent No.1, who had died on 11.9.2002, be brought on the record of

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

the case. A prayer has also been made for condonation of delay in filing these applications.

I have heard learned counsel for the parties and have gone through the record of the case.

I have considered the rival submissions of the parties and the replies filed thereto. I am satisfied that the delay which has been occasioned in moving these applications is bonafide and is not deliberate. There is no reason as to why the appellants are not entitled to the benefit of Section 5 of the Limitation Act. All these applications are accordingly allowed. The delay in filing the appeal is condoned in the interest of justice. The legal representatives of the deceased respondent No.1, Pritam Chand, as mentioned in paragraph-3 of the CMP(M) No.525 of 2005, are ordered to be brought on the record of the case.

CMP(M) No.890 of 2004.

This application has been moved by the appellants with a prayer that the delay in filing the appeal be condoned in the interest of justice. It has been submitted that the appeal could not be filed because of the illness of appellant No.2, who is the wife of appellant No.1, who was prosecuting the case.

I have heard learned counsel for the parties and have gone through the record of the case.

I am satisfied that there is sufficient ground for condoning the delay in filing the appeal in

the interest of justice. This application is accordingly allowed. Delay in filing the appeal is condoned in the interest of justice. This application is disposed of.

RSA No.295 of 2007.

This appeal has been instituted by the defendants against the judgment and decree of the learned District Judge, Kullu, decreeing the suit of the plaintiffs-respondents granting them decree for possession of ½ share of the suit land.

Learned counsel for the appellants has vehemently contended that the judgment of the learned appellate Court cannot be sustained and that the trial Court was in error in decreeing the suit of the plaintiffs as prayed. He submits that the evidence on record does not support the grant of relief as prayed for.

Learned counsel has submitted that the decree in the Civil Suit by which a compromise was arrived at between the parties does not bind the interest of the defendants. He further submits that the sale made by defendant No.7 in favour of the appellants could not have been annulled by the judgment and decree of the learned District Judge. I do not find any merit in the submissions of the learned counsel for the appellants. Both the findings are based on the evidence on record which has been elaborately discussed by the appellate Court.

Findings of fact cannot be altered in second appeal. Question sought to be raised that the evidence has not been properly considered, cannot be considered as re-appreciation of evidence is not permissible in second appeal. I do not find that the appeal raises any question of law. It is undisputed that under Section 100 of the Code of Civil Procedure it is only a substantial question of law which would warrant interference by this Court. No substantial question of law arises for the determination of this Court. In the circumstances, this appeal is dismissed. There shall no order as to costs.

CMP Nos.503 of 2007 and 921 of 2004.

In view of the dismissal of the main appeal, these applications are also dismissed.

December 11, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**